

## 2018 Client Security Fund Annual Report

### An Increase In Claims

By Amber Hollister



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Claims to the Client Security Fund are on the rise. Over the past year, the fund has received 82 claims against 22 lawyers totaling \$2,459,998 in claimed loss. By comparison, the fund only received 48 claims in 2017 and 48 claims in 2016. This stark increase for 2018 has been driven primarily by claims against a handful of attorneys who are alleged to have converted clients' settlement funds.

The OSB Client Security Fund was established in 1967 "to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law." Over its lifetime, the fund has made awards in excess of \$4.5 million to partially or fully compensate clients of lawyers. The Board of Governors has set a target of keeping a \$1 million reserve to avoid a repeat of what occurred in 2012-2013, when the fund was completely exhausted by a spate of claims against a few defalcating lawyers.

Because the Client Security Fund is a statutorily dedicated fund, it is funded entirely by the annual CSF member assessment, interest on invested funds and money collected by subrogation from the defalcating lawyers. The fund does not receive monies from general member fees. While recoveries typically average less than \$5,000 per year, in 2018 the fund was able to recover \$46,000 after learning of an attorney's interest in a high value settlement. Recovery is often challenging because most lawyers responsible for claims are disbarred, deceased or otherwise without assets. Money in the fund is used only for the payment of awards and for the expenses of operating the program. In order to keep pace with the uptick in claims, effective Jan. 1, 2019, the Board of Governors approved a \$5 increase in the fund's assessment to a total of \$15 per member.

#### G. Jefferson Campbell Jr.: \$18,842

The Client Security Fund approved two claims filed by clients of G. Jefferson Campbell Jr., who resigned Form B effective July 14, 2016. In one matter, Campbell received a settlement payment and filed an interpleader action to determine whether his client's third-party creditor was entitled to the funds. The court eventually held that \$17,607 of the settlement belonged to the client, but Campbell never reported the court's findings to his client and instead converted the funds. In the second matter, Campbell accepted a \$1,235 retainer in a bankruptcy matter but withdrew without performing any substantial work for the client.

#### Roger Gray: \$2,000

Roger Gray received \$2,000 from an elderly woman who was serving as a personal representative for a deceased friend

to assist her with administering a probate. Gray asked his client, a former paralegal, to draft forms on his behalf for use in the probate, but he never took any substantial action to represent her. He also never refunded the money. Gray resigned Form B effective July 26, 2018.

#### E. Andrew Long: \$3,240

The fund approved three claims from clients of E. Andrew Long. All three claims involved circumstances in which Long accepted retainers to represent clients but did not provide meaningful legal services. In one real property dispute, Long repeatedly told the client he was "working on it" but never took any action on the client's behalf. Long is currently suspended from the practice of law; a disciplinary board order for his disbarment is on appeal to the Oregon Supreme Court.

#### Jeffrey Milstein: \$13,598

The committee approved four claims from clients of Jeffrey Milstein. In all four cases, Milstein accepted funds from clients for work that he did not perform. For example, in one dispute, Milstein's client was a parent who sought to challenge a Department of Human Services child abuse administrative decision. When Milstein did not provide services, the client was forced to retain new counsel despite having paid Milstein \$7,500 for the work. Milstein ultimately resigned Form B effective Nov. 3, 2016.

#### Kenneth S. Mitchell-Phillips Sr.: \$17,825

Five clients of Kenneth S. Mitchell-Phillips received partial or full reimbursements from the fund. For unknown reasons, in mid-2017 Mitchell-Phillips abandoned his practice and failed to return funds belonging to clients. In the

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largest claim, Mitchell-Phillips settled a claim for property damage and then kept his client's entire settlement; the fund reimbursed the client for \$10,000. In another matter, a client borrowed funds from her grandmother to pay Mitchell-Phillips his \$2,500 retainer, hoping for help avoiding a foreclosure; Mitchell-Phillips provided no assistance and kept her funds. Another client sought assistance with a bankruptcy and paid a \$1,525 retainer, but after Mitchell-Phillips deposited the retainer directly into his business account, he failed to provide any legal services. In another matter, Mitchell-Phillips obtained a \$3,500 settlement in a real estate dispute but failed to pay the funds to his client or provide an accounting. In the final claim, Mitchell-Phillips failed to refund \$300 to a client who had paid his bill in full. Mitchell-Phillips resigned Form B effective Nov. 9, 2017.

## **Jonah Morningstar: \$17,385**

The fund reimbursed two clients of Jonah Morningstar. In one case, Morningstar accepted an \$8,000 retainer to represent an incarcerated client in a post-conviction relief matter but took no action on his case. In the second matter, Morningstar accepted \$9,385 to represent a client in a direct criminal appeal and post-conviction relief matter, but did not provide substantive legal services that benefited his client. Morningstar was transferred to involuntary inactive status on July 27, 2016, and has not returned to the practice of law.

## **Robert J. Smith: \$48,611**

The fund reimbursed three clients of former Eugene attorney Robert J. Smith, who passed away on June 28, 2017. When Smith died, there were no funds in his trust account and his personal representative was unable to locate any trust account records. In the case resulting in the most significant claim, Smith had agreed to represent a client pro bono to resolve a motor vehicle accident claim. He settled the matter for \$50,000, but after paying off one medical lien, Smith kept the remaining \$46,111. The client did not receive any settlement funds. In another case, Smith accepted a \$1,500 retainer and agreed to perform a custody modification for a client; he died before performing any work. Another client paid Smith a \$2,000

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retainer to assist him with the probate of his mother's estate. When Smith failed to move the matter forward, the client sought a refund of \$1,750, which Smith agreed to provide. Smith died without refunding the money.

#### **Matthew A. Wilson: \$30,608**

At Matthew Wilson's request, his client lent \$30,000 to a company in which Wilson was principal; the loan was to be secured by a deed of trust on Wilson's home. Wilson provided a defective deed that could not be recorded, which he failed to correct. He later offered to provide his client with free legal services to pay off the loan. Ultimately, Wilson did not provide any free legal services. A later disciplinary board decision found that Wilson engaged in a misrepresentation when he claimed he had sufficient equity in his home to secure the loan. The committee found that the client's loan was premised upon Wilson's attorney-client relationship with the client and reimbursed the client \$30,000 plus \$608 in court costs the client expended trying to recover the \$30,000. In April 2018, Wilson was disbarred for misconduct related to the same loan.

The members of the 2018 Client Security Fund Committee are Nancy Cooper (chair), Douglas Stamm (secretary), Richard Braun, Jennifer Hisey, Carrie Hooten (public member), Rod Jones, Ann Ledgerwood, David Roy, Lucille Sage, Daniel Steinberg, Stephanie Thompson, Richard Whitlock and Raymond Young.

Anyone who is interested in supporting the work of the OSB Client Security Fund should consider volunteering through the member volunteer survey, available at [www.osbar.org/volunteer/volunteeropportunities.html](http://www.osbar.org/volunteer/volunteeropportunities.html).

Ethics opinions are published and updated on the bar's website at [www.osbar.org/ethics/toc.html](http://www.osbar.org/ethics/toc.html).

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